



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28819162

Date: NOV. 6, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed

endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director's conclusions regarding whether the Petitioner is eligible for second preference classification are unclear. The Director determined the Petitioner satisfied at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). However, the Director further concluded that "[a] review of the evidence . . . does not establish the [P]etitioner possesses a degree of expertise significantly above that ordinarily encountered in the field" and, thus, does not qualify for second-preference classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(2). We note that, in a prior notice of intent to deny (NOID), the Director acknowledged information regarding the Petitioner's academic history and stated, "The evidence submitted meets the plain language requirements [of a member of the professions holding an advanced degree] at this stage of the analysis." The record does not reconcile why the Director addressed whether the Petitioner qualifies for second-preference classification as an individual of exceptional ability if the Director concluded the Petitioner qualifies as a member of the professions holding an advanced degree in a prior NOID. *See* section 203(b)(2) of the Act.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Initially, the Petitioner described the endeavor as a "plan[] to open a [s]hooting [a]cademy . . . in the State of Florida . . . to share my knowledge and ability to educate people about gun safety, shooting sports and specialized training for law enforcement." The Petitioner elaborated that his shooting academy would have "a gun range for pistol and rifle, classrooms and a store" and that he would hire "one more firearm instructor, a receptionist/office assistant, a salesperson and also an accountant." The Petitioner further stated, "we will be going out to schools and having presentations about guns and how to handle them, which will definitely be a huge help for everybody's safety around guns."

In response to the Director's NOID, the Petitioner submitted a business plan, which reiterates the Petitioner's plan to operate "a shooting academy for beginners and professionals who wants [sic] to improve their shooting skills, firearm safety training location, shooting classes, seminars, and private training location, as well as a gun store, selling competition guns and equipment." The business plan indicates the Petitioner would own 100 percent of the company and work as its chief executive officer,

hiring four total employees in the first year, with job titles of “firearm instructor,” “receptionist/office assistant,” “salesperson/social media,” and “accountant,” respectively. The business plan indicates the Petitioner would not hire additional workers beyond those four positions during the first five years of operation. The Petitioner’s own compensation is excluded from the “total personnel costs” calculated for the first five years of operation; however, the business plan calculates the “gross wages” of the company’s four other workers to range from \$153,960 in the first year to \$169,960 in the fifth year of operation. We note that wages of \$169,960 divided among four workers equals an average annual wage of approximately \$43,000.

The Director determined that “the proposed endeavor has substantial merit in an area such as business, entrepreneurialism, science, technology, culture, health, education, the arts, or social sciences.” However, the Director concluded that “the evidence is insufficient to establish that the [P]etitioner’s proposed endeavor . . . stands to have broader implications rising to the level of having national importance,” as required by the first *Dhanasar* prong. The Director acknowledged that “the evidence reflects [the Petitioner’s] work and training provided to his client’s [sic] may have a positive impact on his clients use [sic] and operation of guns[;] however, this level of impact is not reflective of having national importance.” The Director acknowledged information in the business plan submitted in response to the NOID; however, the Director observed, “It does not appear that the proposed endeavor will have a significant economic impact on the U.S. economy or an economically depressed area.” The Director further observed, “It does not appear that the proposed endeavor has the potential to generate a significant number of jobs for U.S. workers.” We note that the Director concluded that the record satisfied the second *Dhanasar* prong; however, the Director reserved an opinion regarding the third *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner references information in the record that provides generalized information regarding firearm training and competitions. The Petitioner also asserts that, although he plans to hire only four workers within the first five years of his company’s operation, “[t]he United States has an intrinsic national interest in making sure small businesses succeed.” The Petitioner further states on appeal that “his main goal is to transfer all his knowledge and experience as a competitor of the shooting sport to individuals that potentially will develop into the athletes who will compete in different levels including the Olympics.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The information in the record, referenced on appeal, that provides generalized information regarding firearm training and competitions does not address the Petitioner, the “specific endeavor that [the Petitioner] proposes to undertake,” or how the specific, proposed endeavor may have “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or broader implications, such as “significant potential

to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. Therefore, that generalized information is inapposite to determining whether the specific, proposed endeavor may have national importance.

Next, the Petitioner’s assertion that “[t]he United States has an intrinsic national interest in making sure small businesses succeed” inverts *Dhanasar*’s national importance analysis. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work, nor is it whether there is a generalized interest in the success of a particular size of business. Instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake” and whether it will have the type of broader implications, noted above. *Id.* at 889-90. Therefore, similar to the generalized information addressed above, whether the United States has some generalized interest in the success of small businesses is inapposite to whether the Petitioner’s specific proposed endeavor may have national importance. *See id.*

Next, although the Petitioner shares his goal to inspire competitors who may become Olympic athletes, that goal relates to whether the proposed endeavor has substantial merit, not whether the proposed endeavor may have national importance. *See id.*

The Petitioner’s proposed endeavor of operating a business that sells firearms and related equipment, trains customers to use those firearms, and provides facilities for customers to use those firearms appears to benefit the Petitioner, as the owner of the business, and the business’s customers. However, the record does not establish how the proposed endeavor may have the type of “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances,” contemplated by *Dhanasar*. *See id.* Although the Petitioner intends to employ a firearm instructor, a receptionist, a salesperson, and an accountant for a total of four workers, the record does not establish how employing those four workers at some unspecified location in Florida, with an average wage of approximately \$43,000, would have “broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *See id.* We acknowledge that the Petitioner also intends to provide gun-safety presentations at schools in some unspecified location. However, the record does not elaborate on this aspect of the proposed endeavor with information—such as the schools at which the presentations would be performed, the number of students enrolled at those schools and attending the presentations, and related information—to assist in determining how these presentations may have the type of “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area,” contemplated by *Dhanasar*. *Id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.